IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 23079 of 2007(V)

PETITIONER:

BIJU K.K., KALLIKKULAM HOUSE,
KOLLAMURI P.O., CHANGANACHERRY.

BY ADV. SRI.SANTHAN V.NAIR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE SECRETARY, LOCAL SELF GOVERNMENT INSTITUTIONS, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF ELECTION COMMISSIONER, OFFICE OF THE ELECTION COMMISSION, CORPORATION BUILDING, PALAYAM, THIRUVANANTHAPURAM.

3. THE RETURNING OFFICER, REPRESENTED BY THE DISTRICT COLLECTOR, REVENUE RECOVERY, KOTTAYAM.

4. MADAPALLY BLOCK PANCHAYAT, BLOCK PANCHAYAT OFFICE, MADAPALLY REPRESENTED BY ITS SECRETARY, MADAPALLY BLOCK PANCHAYAT.

BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
GOVT.PLEADER SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 23079 OF 2007

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Dated this the 21st day of August, 2007

JUDGMENT

Petitioner has approached this court seeking a mandamus to the 2nd and 4th respondent to first conduct election to the vacant seat of Industrial Nagar Division of the Madappally Block Panchayat and after that to conduct election to the vacant post of the Block Panchayat President. Petitioner also seeks a direction to the 2nd and 4th respondents to consider and pass orders on Exts.P1 and P2 representations.

Case of the petitioner in brief is as follows:

Petitioner is a member of the scheduled caste community. Term of office of the committee of the 4th respondent-Panchayat started from 02-10-2005 and is continuing till date. The post of President is reserved for the scheduled caste community. One member was elected as President and he met with an accident and died on 15/07/2007. According to the petitioner hasty steps are taken to elect President from the present members . This is done without seeking to fill up the vacancy which arose

consequent upon the death of a member of the scheduled caste community who was elected as the President, it is stated. According to the petitioner, unless casual vacancy is filled up, there cannot be election to fill up the post of President of the Bharana Samiti.

2. I heard learned counsel for the petitioner and the learned counsel appearing for respondents 2 and 3.

Counsel for the respondents 2 and 3 would point out that election to the casual vacancy of President is governed by Section 153(16). It provides that as follows:

"any casual vacancy arising in the office of the President or Vice-President of a Panchayat shall be reported to the State Election Commission in such manner as may be prescribed and the State Election Commission shall take steps for the conduct of election of President or Vice-President as the case may be, in accordance with the provisions of this Act".

3. Thereafter, learned counsel relies on Rule 4 of The Kerala Panchayat Raj (Election of President and Vice-President) Rules 1995. Rule 4 provides as follows:

" The manner of and the time limit for

intimation of casual vacancies:- The Secretary concerned shall report to the State Election Commission the casual vacancy occurring in the office of the President or Vice-President of the Panchayat within one week from the occurrence of the vacancy".

4. Rule 5 provides for the manner of convening of election meeting. Sub Rule 2 of Rule 5 is relevant and it is extracted hereunder:

" Such meeting shall be convened, in the case of an ordinary vacancy, within three weeks from the date of publication of the names of members by the State Election Commission and in the case of the casual vacancy, as soon as after the occurrence of the vacancy, on such date as may be fixed by the State Election Commission."

5. He would rely on section 149(3) of the Panchayat Raj Act. Section 149(3) provides as follows:

" A casual vacancy in the office of a member of Panchayat at any level shall be filled by the State Election Commission, within six months after the occurrence of the vacancy, through a by-election."

6. Section 153 (14 a) is also relied on by the

respondent. It reads as follows:

> " The validity of the election of the President or the Vice-President of a Panchayat shall not be called in question for the reason of any vacancy in the place of the members or who shall elect President or Vice-President for the reason of the absence of any member."

7. He would point out that for conducting election in the casual vacancy, procedures have to be followed including revision of electoral roll. It is the contention of the respondent therefore that as far as the election to the post of President is concerned Rule 5(2) already referred to contemplates that casual vacancy to be filled up as soon as after the occurrence of vacancy. He would further contend that in fact it is a case where another member from the scheduled caste community is available.

8. Learned counsel for the petitioner relies on third proviso to Section 153 (4) (d). It reads as follows:

> " Provided also that the office of President of any Panchayat shall be reserved for the scheduled caste or scheduled tribes or women belonging to them only if at least one constituency of that Panchayat is reserved for that category."

Of course this provision is enacted to see that there is a member from the scheduled caste community in a case where there is reservation for the post of President of the Panchayat. In this case in fact apart from the person who was holding the post there is another member who is from the scheduled caste community. It would appear that the law does not contemplate that the election to the post of President should be postponed till a casual vacancy is filled up. Learned counsel for the petitioner relies on the decision of this court in **Shaila v. Kerala State Election Commission** (2002(3)KLT 857). That was a case under the Municipalities Act.

On consideration of the entire matter, I would think that counsel for the respondent is correct in contending that the election to the post of President has to be done as soon as the vacancy occurs within the meaning of Rule 5 (2) and it need not brook any delay on account of the election to fill up a casual vacancy. I would further think that this general principle need not be deviated on the basis of the fact that vacancy of President is to be filled up from the members of the scheduled caste community. The vacancy can only be filled up from the members

of the scheduled caste community. There is another person available from the scheduled caste community. In such circumstances, I do not think there is any basis for interference in the writ petition. Accordingly, writ petition is dismissed.

(K.M.JOSEPH, JUDGE)

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